

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KERIMARIE SUTHERLAND,

Plaintiff,

vs.

OTB ACQUISITION LLC,

Defendant.

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CIVIL ACTION NO. 3:23-CV-2665

**APPENDIX IN SUPPORT OF BRIEF IN SUPPORT OF JOINT MOTION TO STAY
PROCEEDINGS AND COMPEL ARBITRATION**

EXHIBIT	DESCRIPTION	NO.
1	Arbitration Agreement	App. 001 - 001
2	American Arbitration Association (“AAA”) Rules Excerpt	App. 004

Dated: December 26th, 2023

Respectfully submitted,

/s/ Celeste R. Yeager

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ATTORNEYS FOR DEFENDANT

/s/ Jonathan J. Walters

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on this 26th day of December, 2023, the undersigned provided a copy of the ***Appendix in Support Brief in Support of Joint Motion To Stay Proceedings And Compel Arbitration*** to counsel in this case via the U.S. Northern District of Texas ECF filing system as follows:

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/s/ Celeste R. Yeager

Celeste R. Yeager

EXHIBIT 1

AGREEMENT TO ARBITRATE

On The Border Acquisition LLC ("On The Border", "OTB") makes available certain internal procedures for amicably resolving any complaints or disputes you have relating to your employment. See Equal Employment Opportunity and Anti-Harassment Policy and Complaint Procedure as well as Problem Resolution and (Section 5). However, if you are unable to resolve any such complaints or disputes to your satisfaction internally, the resolution of all disputes that arise between you and OTB, including any claims OTB may have against you, will be through formal, mandatory arbitration before a neutral arbitrator.

Because of, among other things, the delay and expense which result from the use of the court systems, any legal or equitable claims or disputes arising out of or in connection with employment, terms and conditions of employment, or the termination of employment with OTB will be resolved by binding arbitration instead of in a court of law or equity. This agreement applies to all disputes now in existence or that may exist in the future that I may have against OTB, its affiliates, and/or their current or former employees, or that OTB and/or its affiliates may have against me. Without limitation, such disputes include those involving legally protected rights (e.g., local, state and federal statutory, contractual or common law rights) regardless of whether the statute was enacted or the common law doctrine was recognized at the time this agreement was signed. This includes, without limitation, all disputes concerning wages, compensation, leave, harassment, discrimination, retaliation, conversion and/or termination of employment. This agreement does not limit your ability to complete any external administrative remedies (such as with the EEOC, NLRB, or the filing of a workers' compensation claim or unemployment claim).

This policy substitutes one legitimate dispute resolution form (arbitration) for another (litigation), thereby waiving any right of either party to have the dispute resolved in court.

Arbitration Rules

The arbitration proceedings shall take place in or near the city where you worked. OTB and you agree that any and all claims subject to arbitration under this Agreement to Arbitrate may be instituted and arbitrated only in an individual capacity, and not on behalf of or as a part of any purported class, collective, representative, or consolidated action (collectively referred to in this Agreement to Arbitrate as a "Class Action"). Furthermore, OTB and you agree that neither party can initiate a Class Action in court or in arbitration in order to pursue any claims that are subject to arbitration under this Agreement to Arbitrate. Moreover, neither party can join a Class Action or participate as a member of a Class Action instituted by someone else in court or in arbitration in order to pursue any claims that are

subject to arbitration under this Agreement to Arbitrate. It is the parties' intent to the fullest extent permitted by law to waive any and all rights to the application of Class Action procedures or remedies with respect to all claims subject to this Agreement to Arbitrate. It is expressly agreed between OTB and you that any arbitrator adjudicating claims under this Agreement to Arbitrate shall have no power or authority to adjudicate Class Action claims and proceedings or to rule on the validity and enforceability of the class action waiver provided for herein. The waiver of Class Action claims and proceedings is an essential and material term of this Agreement to Arbitrate, and OTB and If the waiver of Class Action is determined to be prohibited or invalid under applicable law, then the remaining Agreement to Arbitrate is will be valid unless prohibited by law.

Each party is entitled to representation by an attorney throughout the proceedings at their own expense. Each party shall bear their own fees and expenses, unless otherwise awarded by the arbitrator in the final, written decision, except that if you are the one filing the claim, OTB will pay that portion of the arbitration filing fee that is in excess of the similar court filing fee had you filed the claim in court.

A written notice of intention to arbitrate must be submitted in writing within the applicable statute of limitations. The notice shall contain: (1) the name, address and telephone number for all parties; (2) the name, address and telephone numbers of all counsel; (3) a brief statement of the nature of the dispute, including all claims raised; (4) the amount of controversy and (5) the remedy sought. If you are the one filing the claim, the notice shall be sent to: Human Resources, On The Border, 2201 West Royal Lane, Suite 220, Irving, Texas 75063. If OTB is the one filing the claim, the notice shall be sent to the address you have provided to OTB.

The Respondent shall answer in writing within thirty (30) business days of the receipt of the notice to arbitrate.

Within ten (10) business days thereafter, both parties shall submit to the other a list of three (3) qualified arbitrators. An arbitrator must be qualified in employment laws and any other areas of law referenced in this notice.

An arbitrator shall be selected within (30) business days thereafter. If the parties cannot agree, they shall submit any pleadings (notice, answer, etc.) and a list of arbitrators to the American Arbitration Association (AAA) to select a qualified arbitrator. AAA may select an individual not on either party's list.

The Federal Rules of Civil Procedure and Federal Rules of Evidence, as modified by the Agreement to Arbitrate, shall apply throughout the arbitration unless modified by the mutual agreement of the parties, or the arbitrator.

Discovery (interrogatories, document production and depositions), as authorized by the arbitrator, shall commence upon the selection of an arbitrator and shall be completed within six (6) months from that date. The time frame may be modified by mutual agreement, or by the arbitrator.

The arbitrator shall hear the case no more than forty-five (45) business days after discovery is completed.

Within twenty (20) days of the close of the hearing, the arbitrator shall issue a written decision and award (if any) stating the reasons for the decision and award. The decision shall be final and binding on both parties, their heirs, executors, administrators, successors and assigns, and may be entered and enforced in any court of competent jurisdiction. Proceedings to enforce, confirm, modify or vacate the decision will be controlled by and conducted in conformity with the Federal Arbitration Act 9 U.S.C. Sec. 1 et seq. or applicable state law.

You acknowledge and agree that this Agreement to Arbitrate is made in exchange for your employment and/or continued employment, as well as the mutual promises contained in this Agreement. This Agreement to Arbitrate is not and shall not be construed to create any contract of employment, express or implied. This Agreement to Arbitrate does not in any way alter the "at-will" status of employment with OTB, meaning that either your or OTB may terminate the employment relationship at any time, with or without advance notice, and with or without cause. This Agreement to Arbitrate supersedes any and all prior agreements to arbitration entered into between you and OTB.

Digitally Signed By: Keri Sutherland
Date: Oct-30-2021 4:00:09 PM EDT

Employee Signature

10/30/2021

Date



Task Complete

Close

Print

EXHIBIT 2

(2) Simultaneously shall send a copy of any counterclaim to the Claimant.

(3) Shall include with its filing the applicable filing fee provided for by these rules.

(iv) The Claimant may file an Answer to the counterclaim with the AAA within 15 days after the date of the letter from the AAA acknowledging receipt of the counterclaim. The Answer shall provide Claimant's brief response to the counterclaim and the issues presented. The Claimant shall make its filing in duplicate with the AAA, and simultaneously shall send a copy of the Answer to the Respondent(s). If no answering statement is filed within the stated time, Claimant will be deemed to deny the counterclaim. Failure to file an answering statement shall not operate to delay the arbitration.

c. The form of any filing in these rules shall not be subject to technical pleading requirements.

5. Changes of Claim

Before the appointment of the arbitrator, if either party desires to offer a new or different claim or counterclaim, such party must do so in writing by filing a written statement with the AAA and simultaneously provide a copy to the other party(s), who shall have 15 days from the date of such transmittal within which to file an answer with the AAA. After the appointment of the arbitrator, a party may offer a new or different claim or counterclaim only at the discretion of the arbitrator.

6. Jurisdiction

- a. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
- b. The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- c. A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

7. Administrative and Mediation Conferences

Before the appointment of the arbitrator, any party may request, or the AAA, in its discretion, may schedule an administrative conference with a representative of the AAA and the parties and/or their representatives. The purpose of the